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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/760,354

01/21/2004

Michael Hyduk

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07/14/2004

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EXAMINER

LAYNO, BENJAMIN

ART UNIT

PAPER NUMBER

3712

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/760,354	Applicant(s) HYDUK, MICHAEL	
	Examiner Benjamin H. Layno	Art Unit 3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,8,9,15 and 16 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,8,9,15 and 16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>071204</u> . | 6) <input type="checkbox"/> Other: ____. |

of

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 8, 9, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Happy Families or Authors.

The card games Happy Families and Authors are described in the publication The Way To Play, and the websites www.pagat.com/quartet/gofish.html and www.unclesgames.com. The card games Happy Families and Authors each disclose a kit for playing a card game comprising a deck of playing cards including a predetermined number of like symbol cards:

Happy Families: Four like symbol cards of lions,

Four like symbol cards of deer, etc.

Authors: Four like symbol cards of Mark Twain Books,

Four like symbol cards of Charles Dickens Books, etc.

Each kit also discloses a predetermined number of cards that are different from the like symbol cards:

Happy Families: Four different symbol cards - chickens, lions, deer, sheep.

Authors: Different symbol cards - Mark Twain, Charles Dickens,

Robert Lewis Stevenson, William Shakespeare, etc.

In the publication *The Way To Play*, the cards in *Happy Families* do not have suits or numerical symbols. It is well known in the card game art to provide a separate sheet or card having a set of instructions on how to play the card game. In view of such teaching, it would have been obvious to incorporate into the *Happy Families* or Authors card games, a separate sheet or card having instruction on how to play the card game in order for players to conveniently learn how to play the game.

The preamble of claims 8 and 15 recite “**A kit**”. This suggest that a card game **apparatus** is being claimed, **not a method**. In claim 8, the **entire recitation** beginning at paragraph A. (b) (1) , starting “each player receiving a predetermined number of like symbol cards.....”, and ending at paragraph B. (c) “.....the use of secretly coded cards and the manner of winning are the same as the first mode” is considered **game rules**. Furthermore, in claim 15, the **entire recitation** beginning at paragraph A. (b) (1) , starting “each player receiving a predetermined number of like symbol cards.....”, and ending at paragraph B. (c) “.....the use of secretly coded cards and the manner of winning are the same as the first mode” is also considered **game rules**. In game apparatus claims, only the claimed elements having physical structure, (e.g. a deck of playing cards, like symbol cards, different symbol cards, a set of instructions, etc.) are given patentable weight. Game rules, however, have no physical structure per se. Thus, **game rules have no limiting affect in game apparatus claims**.

In regard to claims 9 and 16, the only difference between Happy Families card symbols of animals, and the card symbols of World Landmark theme of the claimed invention resides in the meaning and information conveyed by printed matter. Such differences are considered unpatentable, *Ex parte Breslow*, 192 USPQ 431.

3. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Happy Families or Authors as applied to claim 8 and 15 above, and further in view of Jewett.

To play Happy Families or Authors, each player is dealt a predetermined number different cards, then each player exchanges cards with other players in order to collect the same or like cards from the other players. When young children are playing Happy Families or Authors, it would have been obvious to provide a game controller (adult) who oversees the game making sure everyone is dealt the same number of cards and is following the rules.

The patent to Jewett discloses a melding-type card game wherein players exchange cards in order to form a set of matching cards. Jewett's deck of playing cards further comprise "special effects" cards. These "special effects" cards if acquired by a player, gives the player more extensive trading powers. In view of such teaching, it would have been obvious to incorporate "special effects" or "secretly coded" cards to the Happy Families card game or the Authors card game. This modification would have given players more extensive trading powers, thus making these game more exciting to play.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 2, 8, 9, 15 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 8 and 15 the terms “the first mode”, and “the second mode” all lack antecedent basis.

In claim 1, line 15 “the game controller” lacks antecedent basis.

In claim 1, line 12 the recitation “**again** each player begins with a predetermined number of different cards” suggest that this step was performed earlier. However, there is no earlier recitation in claim 1 where each player begins with a number of different cards.

In claim 1, line 13 the term “the same number of like cards” lacks antecedent basis.

In claim 1, lines 19-20 the recitation “the use of secretly coded cards and the manner of winning are the same as in the first mode” is indefinite. There is no mention of “a plurality of secretly coded cards” earlier in the claim, this is indefinite. Furthermore, there is no mention of how a player wins in the first mode. The first mode described in claim 1, A. paragraphs (a) and (b), which only recites “providing a deck of playing cards...” and “providing a set of instructions....”. No description of how a player wins is recited.

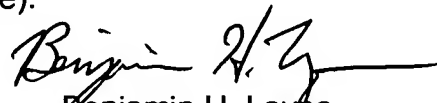
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6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Johnson discloses a card game played similar to Authors, except it uses art painters, page 2, lines 20-23.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (703) 308-1815. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (703) 308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Benjamin H. Layno
Primary Examiner
Art Unit 3712

bhl